

No. 14,826

IN THE

United States Court of Appeals
For the Ninth Circuit

AMANDO SULIMENARIO LUMANTES, <i>Appellant,</i>
VS.
UNITED STATES OF AMERICA, <i>Appellee.</i>

On Appeal from the United States District Court
for the Northern District of California.

BRIEF FOR THE UNITED STATES.

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BRIEF FOR THE UNITED STATES.

I. STATEMENT OF THE CASE.

A. The Proceedings Below.

On May 7, 1953 the Government filed a complaint in the United States District Court for the Northern District of California to revoke and set aside the order admitting appellant to citizenship and to cancel his certificate of naturalization on the grounds of concealment of a material fact and wilful misrepresentation. When the matter came on for trial on September 29, 1954 appellant did not appear, his counsel having been unable to locate him (R. 53). The

Government introduced documentary evidence (Petitioner's Exhibits Nos. 1 through 8 and No. 10, set forth in the Appendix), and the case was continued for submission.

Thereafter counsel for the Government discovered that appellant was in a federal penitentiary in Connecticut, having been convicted of conspiracy to import, transport and conceal narcotic drugs and of the substantive offenses on May 21, 1954 in the United States District Court for the District of New Jersey. (R. 102). Written interrogatories were propounded to appellant (R. 22) and answered (R. 29-32). After appellant's transfer to a penitentiary on the West Coast, he was brought to San Francisco upon a writ of habeas corpus ad testificandum (R. 27) to appear and testify in open court.

On January 21, 1955 the oral testimony of appellant and of the examiner in appellant's naturalization proceeding was taken (R. 65-126, and R. 126-132) and appellant's judgement of conviction was introduced in evidence (Ex. 11). The questions now raised by appellant in this appeal were briefed by the respective counsel and given careful consideration by District Judge Murphy in his written opinion filed March 28, 1955 (R. 33-35). Upon appropriate findings of fact (R. 37-41) the judgment of revocation (R. 42-43) was entered on April 20, 1955.

B. Questions Presented.

Although appellant has made no specification of errors relied upon and has stated the question pre-

sented by merely quoting the language of 8 U.S.C. § 1451, (App.Op.Br. 5) it would appear from appellant's brief that the following questions have been presented:

(1) Is the concealment or misrepresentation of one's marriage a concealment or misrepresentation of a material fact in the meaning of Section 340 of the Immigration and Nationality Act of 1952, 66 Stat. 260, 8 U.S.C. § 1451 (1952)?

(2) Did the Government prove by clear, unequivocal and convincing evidence that appellant concealed and wilfully misrepresented his marital status in the naturalization proceeding?

C. Statement of Facts.

1. Appellant's Background.

Appellant was born in 1916 in the Philippine Islands, where he was educated through the seventh grade (R. 65-66). He entered the United States in 1931 and has resided here continuously except for trips outside the country as a merchant seaman (R. 66). Appellant attended Hayward Union High School after his arrival in this country, and has been able to speak, understand, read, and write the English language without difficulty for many years (R. 66). He writes with particular facility and his choice of language is good (e.g. R. 30-31; R. 90-91).

2. The Misrepresentations.

On April 7, 1947 appellant filed with the Immigration and Naturalization Service a form N-400, en-

titled Application for a Certificate of Arrival and Preliminary Form For Petition For Naturalization, (Ex. 1). Appellant personally prepared the form on a typewriter, (R. 74-75) and certified therein that he had never been married. Questions as to marital status and children were left unanswered.

On October 14, 1948 appellant was questioned orally by naturalization examiner C. A. Antonioli regarding each entry on his preliminary form N-400 (R. 128-129). When an oral answer was the same as the written entry, a checkmark was placed by the question. Where any answer was changed, this was noted in writing by the examiner (R. 128). Appellant having orally stated that he was not married and that he had no children, the examiner entered these answers on the form (R. 129, Ex. 1, p. 3). Appellant's petition for naturalization (Ex. 2) was then prepared, containing a statement that he was not married and with all of the entries relating to his marriage and to his wife and children left blank. Appellant signed the petition for naturalization, swearing to the truth of the contents thereof (R. 131). The petition was granted and a decree of naturalization was entered in the United States District Court for the Northern District of California on December 13, 1948.

On December 9, 1946, previous to any stage of the naturalization proceeding, appellant had married Angela Munar in the Philippine Islands. At the time appellant executed his petition for naturalization, Angela Munar had two children, one by a previous marriage and one whose paternity was left in consid-

erable doubt by appellant's testimony (R. 67-71). Appellant claimed that the second child was born before his marriage to Angela Munar and was not his child (R. 96-99). However, he admitted that he had told customs officers in February, 1954 that he was the father of two children, aged 4 and 6, which would mean that the older child was born in 1947 or 1948 (R. 67-70). Appellant then claimed that he had corrected that statement at a later time to show that only the 4 year old was actually his child (R. 69-70).

3. Admissions in 1951 and 1952.

On June 1, 1951, shortly after the falsity of appellant's naturalization petition was discovered, a sworn statement was taken from appellant by immigration inspectors, a copy of which statement was introduced as Petitioner's Exhibit No. 7 set forth in the Appendix. Appellant was confronted with the naturalization forms and the proof of his earlier marriage (Ex. 7, p. 2). He first claimed that the preliminary form N-400 was filed prior to the marriage, but it was shown to appellant that the entries on the form established that he had prepared it and filed it in 1947, after the marriage (Ex. 7, p. 3). After considering the matter for some 15 minutes, appellant claimed that the marriage contract (Ex. 6) was a false document, that he was not married and that Angela Munar had procured the document by means unknown to him (Ex. 7, p. 4-6). His sworn testimony was to the effect that he and Angela Munar had conspired to present a false petition for immigration visa with full knowledge of the illegality thereof (Ex. 7, p. 6-7).

On June 4, 1951 appellant was questioned again and repudiated his previous statement, admitting that he had lied because he did not wish to lose his citizenship, (Ex. 8, p. 2-3). Appellant claimed that he had submitted his preliminary form in 1946, merely completing the entry as to place of residence when he returned in 1947 (Ex. 8, p. 2, 4). When reminded of the fact that the form showed on its face that it was prepared in 1947, appellant said "There is no statement I could make right now. I don't know why . . . I could not say why I put down I was never married, and I was still married." (Ex. 8, p. 4). He readily admitted that he had been asked orally by the Naturalization Examiner whether or not he was married and that he had said "No." (Ex. 8, p. 5). Appellant claimed that he did not know why he had made the statement to the examiner (Ex. 8, p. 5).

On May 28, 1952 appellant was examined under oath and again stated that he did not know why he had falsely denied that he was married (Ex. 10, p. 1). He admitted that he had asked his wife for a divorce the last time he saw her (Ex. 10, p. 2). Appellant also admitted on the witness stand that he had wanted a divorce since 1950 (R. 124) and that he was keeping company with a woman at the time of his narcotics arrest (R. 125-126). From these facts it is reasonable to infer that one motive for lying was appellant's desire to remarry in this country without the necessity of dissolving his Philippine marriage.

4. Appellant's Trial Testimony.

In his answers to written interrogatories (R. 22 and R. 29-32) and on the witness stand appellant gave an entirely new and different version of the naturalization proceedings. He claimed that he had submitted a hand-written preliminary form in 1945 rather than in 1946 and that the form had been returned to him because it was incomplete in some minor particular (R. 72-76). This was directly contrary to the testimony of naturalization examiner C. A. Antonioli, who stated that preliminary forms are never returned for that reason (R. 130). Appellant testified that in typing his preliminary form in 1947 he had merely copied all of the information from the previous form that he had acted, to quote his own words "without careful consideration of the change of my marital status." (R. 76). He admitted, however, that he did think to bring the form up to date in all other particulars, such as places and dates of residence (R. 76-77).

Contrary to his previous sworn testimony (Ex. 8, p. 4-5) appellant denied on the witness stand that he had any recollection as to whether he was orally asked whether or not he was married and if he had any children (R. 79-80). Appellant then switched to a new position, claiming that any falsification during his oral examination in 1948 was due to confusion and a lack of understanding of the questions (R. 95). When confronted with the fact that he had not given this "confusion" explanation when he was asked about it in 1951, he attempted to evade the question and finally claimed that he hadn't remembered the explanation at that time (R. 94-96).

Appellant was completely evasive and inconsistent in his testimony regarding the June 1, 1951 and June 4, 1951 statements. Although it had been stipulated that all three of the sworn statements were true and complete, (R. 51-52), appellant vehemently denied on the witness stand that he had previously branded the marriage contract as a false document and that he had falsely accused his wife in order to protect his own citizenship (R. 84, 86-87). After reexamining the transcripts of these statements he again changed his testimony, deciding that he could not recall whether or not he had lied to the immigration inspectors in 1951.

Appellant was the sole witness in his own behalf and his testimony was, of course, carefully appraised by the trial court. Appellant came to the witness stand impeached by his admitted wilful perjury on June 1, 1951 and by three felony convictions involving smuggling and concealment of narcotics. Appellant was even evasive regarding the narcotic convictions, refusing at first to admit that he knew that he had been convicted of any crime (R. 31-32, R. 102-104). Appellant's testimony was best characterized by District Judge Murphy when he described in his written opinion appellant's "deliberately equivocal and evasive answers when testifying before me." (R. 35). The court simply could not and did not believe the testimony of appellant upon which he relies in this appeal (App.Op.Br. 8-14).

II. ARGUMENT.

A. APPELLANT'S CONCEALMENT AND MISREPRESENTATION OF HIS MARRIAGE WAS CONCEALMENT AND MISREPRESENTATION OF A MATERIAL FACT.

Section 340 of the Immigration and Nationality Act of 1952, 66 Stat. 260, 8 U.S.C. § 1451 (1952) provides for revocation of citizenship "on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation."

Appellant has belabored the point in his brief that naturalization would not have been denied him because of the mere fact that he was married. The district court in the proceedings below was well aware of this, as have been all of the courts which have considered the materiality of questions regarding marital status. However, materiality is not limited to the ultimate questions of fact in determining eligibility for citizenship. As set forth in the complaint (R. 4-5) appellant's concealment of his marriage was material to the naturalization proceedings in three ways: (1) Disclosure of the facts relating to appellant's marital status was a statutory requirement; (2) Appellant's false statements closed off an avenue of inquiry into his moral character and other facets of his eligibility for naturalization; and (3) Appellant's false testimony under oath was itself proof of lack of good moral character.

1. Marital Status Questions Required by Statute.

Congress has clearly dictated that questions relating to marital status must be answered by an applicant

for citizenship. At the time appellant filed his petition for naturalization, Section 322(a) of the Nationality Act of 1940, 54 Stat. 1154, 8 U.S.C. § 732 (1946) expressly provided that the petition for naturalization should contain statements as to the fact of marriage, name of spouse, date and place of marriage, date and place of spouse's birth, entry of spouse into the United States, and residence of spouse. Section 336 of the Act, 54 Stat. 1157, 8 U.S.C. § 736 (1946), required that the certificate of naturalization itself contain information as to the naturalized citizen's marital status.

2. Marital Status as a Field of Investigation of Eligibility.

In determining such qualifications as good moral character and attachment to the principles of the Constitution inquiry must be made into many facets of an applicant's background. Had the appellant revealed his marriage in the naturalization proceedings the ensuing investigation might well have revealed that he had fathered an illegitimate child by Angela Munar or other facts showing a lack of good moral character or perhaps other grounds for denial of naturalization. However, appellant closed off that avenue of inquiry and as the court observed in *United States v. Albertini*, 206 Fed. 133, 136 (D. Mont. 1913), "The United States, deceived, could make no investigation, and accepted his untrue statements as true."

In the *Albertini* case the defendant claimed that he had failed to reveal his marriage because he had "considered" himself the "same as single," and had had

no fraudulent intent. This defense was rejected by the court in revoking naturalization on the ground that it had been secured by misrepresentations and concealment of material facts.

In *United States v. Marcus*, 1 F. Supp. 29 (D.N.J. 1932), another case on all fours with the present appeal, citizenship was revoked, the court observing at page 29:

“The fact that the respondent was married at the time of naturalization would not have justified the Court in refusing the petition on that ground alone. See 8 USCA § 367.

“The respondent, however, was asking for a great privilege, and it was her duty to be entirely honest in answering the questions propounded to her. The statute required the information to be given. She deliberately stated an untruth, and executed an affidavit, swearing that the statements in the petition were true . . . There has been shown an entire lack of good faith, which amounts to fraud, coming within the terms of the statute.”

The statute referred to above was, incidentally, the same enactment (Section 302 of the Nationality Act of 1940) upon which appellant relies in his argument of non-materiality (App.Op.Br. 6). Passed in 1922 in order to change the prior rule as to eligibility of women married to aliens, the statute merely provides that naturalization shall not be abridged because of sex or marriage. It has no bearing on the question of materiality.

Other decisions where misrepresentations as to marital status were held to be alternative grounds for revoking naturalization include:

United States v. Pistilli, 119 F. Supp. 237 (E.D.N.Y. 1954);

United States v. Mira, 41 F. Supp. 224 (S.D. W. Va. 1941);

United States v. Rutman, 27 F. Supp. 891 (S.D.N.Y. 1939).

Misrepresentations as to marital status have also been held to be material in analogous situations in the field of naturalization. It was held that a petition for naturalization would be denied in *In re Zycholc*, 43 F.2d 438 (E.D. Mich. 1930), where the petitioner had concealed her marriage and her maiden name. In *Roberto v. United States*, 60 F.2d 774 (7th Cir. 1932), the court affirmed a criminal conviction where the defendant had falsely stated in a naturalization proceeding that he was a single man. The Court observed at page 775:

“In view of the nature of the proceedings and the subject of inquiry, such false statement was in respect to a material relevant fact.” (citing *United States v. Marcus, supra*).

In *United States ex rel. Karpay v. Uhl*, 70 F.2d 792 (2d Cir. 1934), the court affirmed an order dismissing habeas corpus proceedings, holding that a conviction of perjury for falsely stating that one was unmarried was sufficient grounds for deportation. The court stated at page 793 “That his marital status is a material matter seems beyond question.”

The problem of materiality in naturalization proceedings has also arisen where the applicant has concealed arrests or convictions which of themselves would not have barred naturalization, either because the offense occurred prior to the five-year period or because the offense did not prove bad moral character. The courts have uniformly ruled that the misrepresentation was that of a material fact, holding it to be immaterial that the arrest or conviction would not of itself have barred naturalization. *Brenci v. United States*, 175 F.2d 90, 92 (1st Cir. 1949); *United States v. Ascher*, 147 F.2d 544 (2d Cir. 1945); *Stevens v. United States*, 190 F.2d 880, 881 (7th Cir. 1951); *United States v. Corrado*, 121 F. Supp. 75, 78 (E.D. Mich. 1953).

3. False Testimony as Proof of Lack of Good Moral Character.

Appellant, having falsely testified in his preliminary form N-400, in his naturalization petition and in his oral examination, was not and had not been for the five-year period a person of good moral character. In *Del Guercio v. Pupko*, 160 F.2d 799 (9th Cir. 1947), this Court held that concealment of two misdemeanor convictions, neither of which reflected adversely upon the petitioner's moral character, required that the petition for naturalization be denied. The Court said:

“Appellee's grave fault lay in her falsification of a matter concerning which the government was obviously entitled to be informed. . . . Should the courts condone these deceitful practices the whole procedure preliminary to naturalization would be

effectively undermined and the declared purpose of Congress frustrated. . . . Clearly, the perpetration of such a fraud upon the government in the very process of naturalization involves moral turpitude and exhibits the unfitness of the applicant for the high privilege of citizenship.”

The *Del Guercio* decision has, of course, been followed in cases where the question was revocation rather than denial of a petition. Eg. *United States v. Anastasio*, 120 F. Supp. 435, 440 (D.N.J. 1954). In *United States v. Corrado*, 121 F. Supp. 75, 78 (E.D. Mich. 1953), the court quoted the *Del Guercio* decision and said:

“A fortiori, if an applicant is refused citizenship because the government caught him in making a false statement in his application for citizenship, should any naturalized person be permitted to keep his citizenship as a reward for having been successful in his deceit? We cannot follow that kind of reasoning. Since the information concealed was asked, and a truthful answer might possibly have prevented defendant from obtaining his citizenship in the first instance, the misrepresentation was clearly material.”

In *United States v. Forrest*, 69 F. Supp. 389 (D.R.I. 1946), naturalization was revoked on the grounds of fraud and illegality, the court holding that a false statement in the proceeding that petitioner was married and a false statement in voting registration demonstrated the petitioner’s lack of good moral character.

B. THE GOVERNMENT PROVED BY CLEAR, UNEQUIVOCAL AND CONVINCING EVIDENCE THAT APPELLANT CONCEALED AND WILFULLY MISREPRESENTED HIS MARITAL STATUS IN THE NATURALIZATION PROCEEDING.

1. The Wilfulness and Intent Required.

In arguing the matter of wilfulness and intent, appellant has apparently assumed that there must be intent to defraud in the sense of a consciously evil purpose of deception. Although in this case the evidence is clear that appellant had such a purpose, proof of such intent is not a requirement for revocation. The statute speaks only of "concealment of a material fact or willful misrepresentation." Clearly Congress intended the word "willful" to mean the intentional making of a statement which one knows to be false.

In none of the leading Supreme Court cases, *Schneiderman*, *Baumgartner* or *Knauer*, is there any mention of a requirement of intent to defraud or wilfulness in the sense of an evil purpose. In the *Baumgartner* case at 322 U.S. 672, and in the *Knauer* case at 328 U.S. 660, the Court speaks of perjurious falsity as distinguished from objective falsity. It is clear, however, that the Court is only concerned with whether the applicant was *aware* of the fact that his oath or statement was not true.

The crime of perjury itself only requires the giving of false testimony with knowledge of the falsity, although the statute may require that the statement be made "wilfully." In *Maragon v. United States*, 187 F.2d 79 (D.C. Cir. 1950), cert. denied, 341 U.S. 932, the court observed in upholding a perjury conviction

that the word wilful in the statute meant no more than “knowingly or intentionally.”

In *Fields v. United States*, 164 F.2d 97 (D.C. Cir. 1947), involving wilful withholding of records, it was held that the act need not be done for an evil or bad purpose and that the term “wilful” was intended to rule out mere inadvertence or accident. Accord: *United States v. Illinois Central R. Co.*, 303 U.S. 239, 242 (1938); *United States v. Murdock*, 290 U.S. 389, 394 (1933); *Townsend v. United States*, 95 F.2d 352, 358 (D.C. Cir. 1938), cert. denied 303 U.S. 664.

2. The Weight to Be Given the Trial Court's Findings.

It is urged at page 8 of appellant's brief that an appellate court has a duty upon review of denaturalization cases to examine the evidence to ascertain whether it meets the high standard of proof required. But then appellant seems to suggest that this Court should try the case *de novo* on selected portions of the printed record in order to determine “whether the evidence presented by the Government is sufficient to justify the relief sought” (App.Op.Br. 8). It is clear, however, that the Supreme Court had no such procedure in mind when it evolved the “clear and convincing evidence” doctrine in *Schneiderman v. United States*, 320 U.S. 118, 125 (1943); *Baumgartner v. United States*, 322 U.S. 665, 670 (1944); and *Knauer v. United States*, 328 U.S. 654, 660 (1946). In the *Baumgartner* decision, at page 670, the Court said:

“That the concurrent findings of two lower courts are persuasive proof in support of their

judgments is a rule of wisdom in judicial administration. In reaffirming its importance we mean to pay more than lip service.”

This statement is followed by a discussion of the duty of appellate review in light of the problem of “findings of fact” which are actually ultimate judgments on masses of evidentiary details or decisions which “cannot escape broadly social judgments.” The Court carefully avoided enunciation of a fixed rule for the weight to be given lower courts’ findings. The final conclusion was that it sufficed to say that the importance of the clear and convincing evidence test would be lost if the ascertainment by lower courts that the standard had been met were to be deemed a “fact” of the same order as all other “facts”, not open to review.

In the *Knauer* case, 328 U.S. at page 660, the Court acknowledges that Rule 52(a) of the Federal Rules of Civil Procedure requires the reviewing court to give due regard to the appraisal of the veracity of the witnesses by the judge who saw and heard them.

The decisions in *Brenco v. United States*, 175 F.2d 90, 94 (1st Cir. 1949) and *Cufari v. United States*, 217 F.2d 404, 408 (1st Cir. 1954), cited at page 8 of appellant’s brief, contain excellent analyses of this problem. In the *Brenco* case, the outcome turned almost entirely on the question of whether the appellant had acted knowingly and wilfully in concealing his arrests. Appellant’s prior admissions indicated he had, but on the witness stand he denied any recollection of being

asked about the arrests, (a case very similar to the present appeal). In deciding whether credence should be given to the prior statement or to appellant's trial testimony, the Court of Appeals said, at page 94:

“. . . a highly important factor in the decision of this question is the appellant's demeanor on the stand which the court below had an opportunity to observe, but we have not. Thus, it seems peculiarly appropriate for us to accept the view of the trial court that the statement is entitled to credence in spite of the appellant's apparent lack of facility on the stand.

“And we do not read the decisions of the Supreme Court in recent denaturalization cases as necessarily precluding us from adopting the trial court's view as to the probative value of the statement.”

The suggestion that appellate courts had been given the duty to try cases of this nature *de novo* on a cold record was expressly rejected. The Supreme Court decisions were interpreted as

“requiring appellate courts to make their own findings of ultimate facts, at least in cases, unlike the one at bar, where a decision cannot ‘escape broadly social judgments—judgments lying close to opinion regarding the whole nature of our Government and the duties and immunities of citizenship.’ *Baumgartner v. United States*, supra, 322 U.S. at page 671, 64 S.Ct. 1240, 88 L.Ed. 1525. But we do not interpret them as authorizing appellate courts to make independent findings of evidentiary facts of an objective nature when the credibility of a witness is an important factor in reaching a decision.”

In the *Cufari* case the Court of Appeals again rejected the idea that they should wholly disregard findings of fact made below and themselves try these cases *de novo*. The court limited itself to a statement that while it would accord weight to a district court's findings in deference to the wisdom of the general rule of judicial administration based on the opportunity accorded that court to observe witnesses in the flesh and judge their credibility, it would not weight those findings as heavily as in other civil cases.

3. The Evidence and Findings of Wilfulness.

The evidence from which the trial court concluded that appellant had acted wilfully and with an intent to deceive the Government is summarized in the statement of facts herein. In attacking this evidence, appellant is able to point to nothing more than his own protestations of lack of intent to deceive (to which the trial court could give no credence), and the fact that he had later filed a petition for immigration visa which revealed his marriage to the Government (App. Op.Br. 12-13).

At page 19 of the brief the argument is made that appellant could not have wilfully concealed his marriage since, at a later time, he voluntarily submitted the petition showing that he had married in 1946. This, however, does not follow. In the first place, the petition for immigration visa was by no means a voluntary disclosure of the false statement, since the Immigration authorities discovered the fraud only by an item-by-item comparison of the petition filed in

1950 against the naturalization forms. Appellant may well have assumed that no one would discover the discrepancy, or he may have even forgotten the concealment of some years before. Or again, as in the case of *United States v. Mira*, 41 F. Supp. 224 (S.D. W.Va. 1941), he may have decided that it was worth the risk of denaturalization to bring his wife to this country. He may well have been erroneously advised that the misrepresentation would not be considered sufficiently material to warrant revocation.

Factually, this was not a complex case. It turned almost entirely on the question of whether or not appellant acted wilfully and intentionally when he made the false statements about the objective concrete fact of his marriage. In reviewing the evidence to determine whether it meets the required standard of proof, this Court should adopt the findings of the trial judge, who had the best, in fact the only fair opportunity to observe the demeanor of the witnesses and to judge their credibility. In his written opinion District Judge Murphy expressed his views of the evidence of wilfulness as follows:

“II—WILFUL MISREPRESENTATION

“This is primarily a factual question. It is enough to say that there is absolutely no doubt in my mind that Lumantes deliberately lied and intended to deceive the government when he falsely stated his marital status. His completely inconsistent explanations of the way the entry came to be on the form, his denial of the truth of his marriage when his wife sought entry, his deliberately equivocal and evasive answers when

testifying before me can lead to only one conclusion—he knew he was married and deliberately and wilfully misrepresented his marital status.”

With such clear and convincing evidence of fraud before it, the court made the only finding of fact possible under the circumstances (finding of fact No. 6, R. 38-39), which recites:

“At the time of filing the preliminary forms for petition for naturalization, making the aforesaid oral statement, and filing the petition for naturalization, respondent was married, a marriage ceremony of marriage between respondent and Angela Munar having been performed on December 9, 1946 at Bauang, La Union, Republic of the Philippines, as respondent then and there well knew; and respondent concealed the fact that he was married and wilfully misrepresented his marital status with knowledge of the falsity and intent to deceive the Government.”

III. CONCLUSION.

Appellant procured the order admitting him to citizenship and the certificate of naturalization by concealment of his marriage and by wilful misrepresentations of his marital status. The concealment of his marriage was material in that a disclosure of the facts relating to his marital status was a statutory requirement, his false statements closed off an avenue of inquiry into his eligibility for naturalization, and his false testimony under oath was itself proof of lack of good moral character. The evidence that

appellant had concealed his marriage and wilfully misrepresented his marital status, with knowledge of the falsity and with intent to deceive the Government, was more than clear, unequivocal and convincing—it was overwhelming. It left no room for doubt in the mind of the trial judge. The carefully considered judgment of the lower court should be affirmed.

Dated, San Francisco, California,
January 11, 1956.

Respectfully submitted,

LLOYD H. BURKE,

United States Attorney,

JAMES B. SCHNAKE,

Assistant United States Attorney,

Attorneys for Appellee.

(Appendix Follows.)

Appendix.

PETITIONER'S EXHIBIT NO. 4
REPUBLIC OF THE PHILIPPINES
PROVINCE OF LA UNION
BAUANG

OFFICE OF THE LOCAL CIVIL REGISTRAR

June 17, 1950

TO WHOM IT MAY CONCERN:

This is to certify that the undersigned, cannot issue the certified copy of the Marriage Contract of the spouses FIDEL VALDEZ AND ANGELA MUNAR, alleged to have been married in this municipality before the Justice of the Peace, on April 10, 1938, in view of the fact that the Register of Marriages during said year was burned in the former Stewart Building where the Municipal Treasurer's Office was located during the enemy occupation in this municipality.

This certificate is issued upon the request of Mrs. Angela M. de Lumantes, this 17th day of June, 1950, at Bauang, La Union, in connection with their application to go to the United States.

L. AQUINO

L. D. AQUINO

(Seal)

Local Civil Registrar Clerk

PETITIONER'S EXHIBIT NO. 5
 REPUBLIC OF THE PHILIPPINES
 PROVINCE OF LA UNION
 BAUANG

OFFICE OF THE LOCAL CIVIL REGISTRAR

The undersigned, Local Civil Registrar Clerk, hereby certifies that according to the Certificate of Death filed in this office, the following entries are shown:

Place of death.....	City of Baguio, Philippines
Name of deceased.....	Fidel Valdez
Residence	Paringao, Bauang, La Union
Sex	Male
Nationality	Filipino
Civil status.....	Married
Age	28 yrs.
Occupation	Laborer
Birthplace	Candon, Ilocos Sur
Name & Address of surviving spouse	Angela Munar, Bauang, La Union
Informant	(Sgd.) Angela Munar
Address	Bauang, La Union
Place of burial.....	Baguio, Mt. Prov.
Date of burial.....	March 21, 1945
Date of death.....	March 21, 1945
Cause of death.....	Killed instantly by bomb shellings.

This certificate is issued upon the request of Mrs. Angela M. de Lumantes, this 19th day of June, 1950, at Bauang, La Union, in connection with her application to go to the United States.

L. AQUINO

L. D. AQUINO

(Seal)

Local Civil Registrar Clerk

PETITIONER'S EXHIBIT NO. 6
 REPUBLIC OF THE PHILIPPINES
 PROVINCE OF LA UNION
 BAUANG

OFFICE OF THE LOCAL CIVIL REGISTRAR

This is to certify that according to the Marriage Contract under the custody of this office, the following entry is shown:

MARRIAGE CONTRACT

Municipality of Bauang, Province of La Union, Register No. 177

	Husband	Wife
Contracting parties	Amando S. Lumantes	Angela Munar
Age	30 yrs 9 mons.	25 yrs. 6 mons.
Nationality	Filipino	Filipino
Residence	San Fernando, La Union	Bauang, La Union
Single, widowed or divorce.	Single	Single
Father	Honorato Lumantes	Eugenio Munar
Nationality	Filipino	Filipino
Mother	Eusebia Jamorod	Tomasa Dumo
Nationality	Filipino	Filipino
Witnesses	Mariano P. Sobiano	Alejandra Navera
Residence	San Francisco, California	Bauang, La Union
Place of marriage.....	Iglesia de S. Pedro Apostol, Bauang, La Union	
Date of marriage	December 9, 1946	
Solemnized by	Rev. Fr. Arsenio Pacis	
Title	Parish Priest, Bauang, La Union	

This is to certify that I, Amando S. Lumantes, and I, Angela Munar on the date and at the place above given, of our own free will and accord and in the presence of the person solemnizing this marriage and of the above-named two witnesses, both of age, take each other as man and wife.

And I, Rev. Fr. Arsenio Pacis, Parish Priest, Certify that on the date and at the place above written, the aforesaid Amando S. Lumantes and Angela

Munar, were with their mutual consent lawfully joined together in matrimony by me in the presence of the above-named witnesses, both of age; and I further certify that the Marriage License No. 3322362, issued at Bauang, La Union, on Dec. 7, 1946, in favor of said parties, was exhibited to; and that consent to such marriage was duly given, as required by law, by the person or persons above mentioned.

IN WITNESS WHEREOF, we sign this certificate in triplicate this 9th day of December, 1946.

(SGD.) AMANDO S. LUMANTES

(SGD) ANGELA MUNAR

(SGD.) ARS. PACIS

Parish Priest

Witnesses:

(Sgd.) Mariano P. Sobiano

(Sgd.) Alejandra Navera ..

Received copy of marriage contract between Amando Lumantes and Angela Munar, such copy being signed or thumb-marked by the parties, the witnesses and the officiating priest, Rev. Arsenio Pacis. Dec. 9, 1946, (Sgd.) SINF. DUMO, Local Civil Registrar, Bauang, La Union.

This certificate is issued upon the request of Mrs. Angela M. de Lumantes, this 2nd day of August, 1949, at Bauang, La Union.

(Seal)

C. BALANON

Local Civil Registrar
& Municipal Treasurer

CJ/4

PETITIONER'S EXHIBIT NO. 7

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
San Francisco 11, Calif.

File #1300/111905

Sworn statement taken from AMANDO
SULIMENARIO LUMANTES, by In-
vestigator G. L. Hash, in Rm. 1106-C,
630 Sansome St., San Francisco, Calif.,
on June 1st, 1951.

INVESTIGATOR HASH TO WITNESS:

- Q. Mr. Lumantes. You are advised that I am an Investigator of the Immigration and Naturalization Service, Department of Justice. I am authorized by law to administer the oath in connection with the enforcement of the Immigration and Naturalization and Alien Registration laws. I desire to question you under oath concerning your petition for the issuance of an immigration visa for your wife, PETRONILA ANGELA MUNAR LUMANTES. Any statement you make should be voluntary and you are hereby warned that that may be used against you in any proceeding that the Government deems advisable. Are you willing to make such a statement?
- A. I am glad, sir.
- Q. Will you please stand and raise your right hand to be sworn. Do you solemnly swear that all of the statements you are about to make will be the

truth, the whole truth, and nothing but the truth, so help you, God?

A. Yes.

Q. You are informed that if you wilfully and knowingly give false testimony while under oath, during this proceeding, you may be prosecuted for perjury, the penalty for which is a fine of not more than \$2,000. or imprisonment of not more than five years or both such fine and imprisonment. Do you understand?

A. Yes, sir.

Q. What is your full, true and correct name?

A. AMANDO SULIMENARIO LUMANTES.

Q. Your address?

A. 1204 Mason Street, San Francisco, Apt. 22.

Q. When and where were you born?

A. I was born on February 10, 1916 at Oroquieta, Misamis Occidental, Mindanao, Philippine Islands.

Q. When and where did you last enter the United States?

A. In 1931, sir.

Q. Where?

A. San Francisco.

Q. Of what country are you a citizen?

A. American citizen through naturalization. (1)

Q. When and where were you naturalized?

A. I was naturalized in San Francisco, sir, in 1948.

Q. Are you the AMANDO SULIMENARIO LUMANTES of 1204 Mason Street, San Francisco who was admitted to citizenship, December 13, 1948?

A. That's right, sir.

(NOTE: File 245/P/89829 contains the subject's Petition for Naturalization and his photograph. The photograph is a good likeness, and the subject identifies it as being his own.)

Q. Are you married or single?

A. Married now, sir.

Q. When and where were you married?

A. I was married in Bauang La Union, Philippine Islands; December 10, 1946; to PATRICIA ANGELA MUNAR.

Q. Is that the person to whom your present petition applies named PETRONILA?

A. Yes, sir.

Q. Have you ever been married before?

A. No, sir.

Q. Had your wife ever been married before?

A. Yes, sir.

Q. How many times?

A. Once.

Q. How did her former marriage terminate?

A. Her husband was killed by the Japanese.

Q. When did you apply for naturalization?

A. If I won't be mistaken . . . I am not too sure . . . it was about 1945, somewhere around there.

Q. I show you Petition Form N-400 in the name of AMANDO S. LUMANTES, 1204 Mason Street, Apt. 7 (San Francisco), in which you claim to have resided at 1204 Mason Street in February, 1947 and which is date stamped by this Service, April 7, 1947. Is this your petition and is this your signature? (Shown).

- A. Yes, sir, that is my signature.
- Q. I show you Form N-405 which was sworn to before Preliminary Examiner C. A. Antonioli on October 14, 1948 which has your photograph stapled to it. Does this pertain to you? (Shown).
- A. Yes, sir.
- Q. Are you able to read and understand English?
- A. That's right, sir. (2)
- Q. On Form N-400, date stamped April 7, 1947, under Question (22) which reads: "How many times have you ever been married?", is type-written, "I was never married." On the same form on the page designated, Statement of Facts to be Used in Making and Filing My Petition For Naturalization, under Question (7) is written in pen, "Not", in the space used to indicate whether or not married. On Form N-405, which was sworn to October 14, 1948, under Question (7) is indicated, "I am not married." Now, you have just stated to me that you were married December 10, 1946 to PATRICIA ANGELA MUNAR; and, in file no. 1300/111905, which is your petition file, I find a Marriage Contract issued on the request of Mrs. Angela M. de Lumantes, August 2, 1949, at Bauang, La Union, Philippine Islands, by Mr. C. Balanon, Local Civil Registrar & Municipal Treasurer of that town. Furthermore, I find in your petition Form I-133, page 2, Section 5, you state that you were married December 9, 1946; and under Section 6, same page, you state that the full name of your wife is PETRONILA ANGELA MUNAR

LUMANTES. Have you an explanation for these discrepancies?

A. There is no explanation, sir. But I was thinking I filed my petition in 1946 before I got married. I stated in my application for naturalization that I wasn't married because I am not too sure I applied for my naturalization application in 1946.

Q. Mr. Lumantes. You filled out and presented the application for naturalization after you were married.

A. Before, sir.

Q. The dates on the sworn documents in your naturalization file, both in 1948 and in 1947, were long after your marriage. They were prepared at different times and signed at different times. Both of them indicate in three separate places that you were not married.

A. That's right, sir.

Q. All this took place long after December, 1946 at which time you married your present wife. How can you now say that you were confused as to whether you were married or not?

A. That's what I was thinking. They send me a letter to appear at Immigration for examination for naturalization, and I was sent home because my ship was on the other side. I don't know how many times they send me letters before I get off the ship. I am not too sure that I filed my application before I got married, or not,—because they sent me a couple of letters that "You are to appear for Immigration". Because

- if I was married before I apply for my application for naturalization, I am sure that I would have put it right that I was married.
- Q. I show you Form 13-4 which is attached to your original Form N-400 and is a supplement thereto. In Form 13-4, you have indicated that you have resided at 1204 Mason Street "until now, February of 1947"?
- A. That's right, sir.
- Q. You have indicated that you were employed by the W. R. Chamberlin & Co. until March of 1947, which means that your petition was filed at or subsequent to that time. However, evidence which you yourself have submitted indicates that you were married December 9, 1946. Is it not true that you deliberately, and for reasons of your own, stated that you were not married? (3)
- A. I could not say that I deliberately do it, because there is nothing wrong if we are married to tell the truth about it. If I filed the petition in 1947, I didn't do it deliberately.
- Q. Let us take those occasions one at a time. On what date were you married?
- A. December 9, 1946.
- Q. Do you identify Form 13-4 attached to Form N-400, in which you stated that you were living in February, 1947 at 1204 Mason Street and that you were employed until March, 1947 by the W.R. Chamberlin & Co.? (Shown).
- A. Yes, sir.
- Q. Do you identify your signature on page no. 2 of N-400 in which you state under Question (18)

that you have been a resident of San Francisco, California “since November, 1936 until now, March, 1947”? (Shown).

A. Yes, sir.

Q. Do you read on this form under Question (22): “How many times have you ever been married?” typewritten, “I was never married.” (Shown).

A. Yes.

Q. I show you Form N-405 which states on page no. 2, “Petitioner and above witnesses sworn by me on October 14, 1948, (signed) C. A. Antonoli”; which states on page no. 1 under Question (7) “I am not married” and on page no. 2 under Statement of Applicant, after the printed statement, “Marital history not shown in petition”—“None”. Do you identify those as pertaining to you? (Shown).

A. That’s right.

Q. Now Mr. Lumantes. As an intelligent man, you can realize that there are two possibilities. Either you were married to PETRONILA ANGELA MUNAR when you filed the petition and were naturalized, or you were not married at that time and the document which you later presented is a false document. Which is the case? There is the third possibility, that you may refuse to answer me since it is a voluntary statement.

A. No, I will answer it.

(Note: Fifteen minutes’ pause) . . .

This is a false document. (Witness picking up and identifying document headed, “Republic of the Philippines, Province of La Union, Bauang”).

This document was presented by the firm of attorneys, Jackson & Hertogs, in support of Form I-133, Petition For Issuance Of Immigration Visa.)

- Q. Mr. Lumantes. Did you present this document to your attorneys, Jackson & Hertogs?
- A. I guess it was sent by my wife.
- Q. Did you present it to them?
- A. I cannot say, because my wife sent everything to them.
- Q. Remember, now, because we are going to have to ask them, also?
- A. Yes, but I do not exactly remember whether I did or not. (4)
- Q. I now present for your inspection Form I-133 (signed) Amando S. Lumantes and notarized before Notary Ruth Wilbur, September 1, 1950. Do you recognize your signature? (Shown).
- A. Yes, sir.
- Q. Did you present this document to this Service?
- A. I guess I did, sir.
- Q. Under your signature on page no. 3 of this form is printed, "Personally appeared before me, the above-named petitioner, who signed the foregoing petition in my presence and who, being fully sworn, on oath says that the facts stated in the foregoing petition are true as he verily believes." This statement is notarized and signed by Ruth Wilbur, Notary Public. Did you so swear, Mr. Lumantes?
- A. I guess I did, sir.

Q. Now, either you did or you didn't.

A. I did.

Q. Have you ever in your life been married?

A. Yes, I am married now.

Q. When and where and to whom were you married?

A. PETRONILA MUNAR.

Q. Tell me the truth. Were you ever actually legally married?

A. Not exactly.

Q. In a marriage there can be no halfway; either married or not married. Which are you, married or not married?

A. Not married.

Q. Then what do you mean by "not exactly"?

A. I have not seen her for five or six years.

Q. Did you ever live with her as man and wife?

A. Yes, for ten days.

Q. When was that?

A. 1947 . . . something like that. I don't know what month, though.

Q. Where was it?

A. Somewhere in Bauang, La Union. I guess it was Barinjao.

Q. And you have not seen this woman since that time?

A. That's right.

Q. Have you ever lived with any other woman for any length of time?

A. No, sir . . . I wish to change the above statement. I have not seen PETRONILA since the ship was in Manila, which was on December 15, 1950.

- Q. For how long a time did you see her then?
- A. About two days, something like that. (5)
- Q. Did you stay with her then as man and wife?
- A. No, sir, because I was aboard the ship.
- Q. When was it decided that you would present an application for an immigration visa in behalf of this woman?
- A. About the time I presented the paper. (Witness indicates Form I-133 which was sworn to before a Notary Public, September 1, 1950).
- Q. Had you been corresponding with PETRONILA prior to that time?
- A. That's right, sir.
- Q. Was it your intention to live with PETRONILA MUNAR as man and wife in the United States if she were able to immigrate here?
- A. Yes, after we got married.
- Q. Did you present this petition with the full knowledge of PETRONILA MUNAR?
- A. Yes, sir.
- Q. When did you first discuss this matter with her by letter?
- A. When I was in the States. She answered my letters twice a month.
- Q. When did you first start corresponding regularly with PETRONILA?
- A. The late part of 1947.
- Q. Did you discuss the matter of presentation of this petition when you were in Manila in December, 1950, with PETRONILA?
- A. No, sir. The ship was in Manila and in 40 hours the ship leaves, and I was aboard the ship; and

the only time I got to see her was at her aunt's at nighttime and we didn't have time to discuss this. I had to stay aboard the ship because I couldn't leave my job.

Q. Why did PETRONILA provide you with this marriage document?

A. I don't know. She wants to come to the States.

Q. Were you advised by your attorneys that this document would have to be obtained?

A. That is what they say; before she could come to the States, we would have to have a document. That is right in the application.

Q. And you communicated that information to her by letter?

A. That's right, sir.

Q. How did she get a document which, in truth, should not exist?

A. I don't know, sir, because I wasn't there.

Q. Didn't she ever tell you how she obtained it?

A. No, sir.

Q. I gather from your statement that you and PETRONILA ANGELA MUNAR decided by yourselves that you would present the petition for the issuance of an immigration visa naming her as your wife in order for her to enter the United States as a nonquota immigrant when, in fact, she was not your wife and has not at this time been married to you legally. Is that correct?

A. That's correct. (6)

Q. Have your attorneys, Jackson & Hertogs, any intimation that such is the case?

A. I don't know, sir.

- Q. Do they have any idea that you are not actually married?
- A. That Certificate right there, that is all I could say . . . when they receive this Marriage Certificate right there.
- Q. Did you ever advise them that you were not actually legally married?
- A. No, sir.
- Q. Then they have represented you in this matter in good faith?
- A. I guess so.
- Q. You guess so? Is there a doubt in your mind?
- A. No, they didn't know about it.
- Q. Are you aware that there is an immigration quota restricting the number of persons who may legally enter the United States from the Philippines?
- A. No, sir, I didn't know that. In 1934 I heard that there was a limited number that may enter but I didn't know how many.
- Q. Are you aware that wives of citizens of the United States are exempt from the quota restrictions?
- A. That's right, sir.
- Q. Is that, then, the reason you presented Petition For Issuance of Immigration Visa naming PETRONILA ANGELA MUNAR as your wife?
- A. That's right.
- Q. Are you aware that such an action is contrary to law?
- A. What is that?

Q. I will explain it further. Do you know that it is contrary to law to present before the Government of the United States, a petition for the issuance of an immigration visa in behalf of a wife, in this case, PETRONILA ANGELA MUNAR, who actually is not your wife?

A. That's right . . . against the law.

Q. Have you always known that?

A. Yes, sir.

Q. Have you understood all my questions?

A. Yes, sir.

Q. Have you been given plenty of time to answer these questions?

A. Yes.

Q. Have you been placed under any duress or force?

A. No, sir.

Q. Have you been promised any special leniency or privilege by me for answering these questions?

A. No, sir. (7)

Q. Have you answered them all truthfully and to the best of your knowledge?

A. Yes, sir.

Q. Is there anything further you wish to say?

A. Nothing, sir.

Q. Will you sign the stenographer's notebook to indicate that you were present today?

A. I will, sir.

Q. When is the last time you entered the United States?

A. Last Wednesday (May 30th) on the "President Pierce". My last foreign port was Yokohama. I sailed on that ship from San Francisco.

Q. Will you agree to keep this office advised as to your whereabouts and to come in to this office when called?

A. I will do so as far as is compatible with my occupation as a seaman.

Q. When do you expect to be back in port?

A. Sometime next week; I don't know what day.

Q. Will you come to this office next week and read over and sign this statement after it has been typed?

A. Yes, sir.

Amando S. Lumantes
(Signature, as traced from
notebook no. 20482.)

I hereby certify that the foregoing is a true & correct transcript of my stenographic notes taken in the above hearing. Bk. 20482.

Caroline M. Miller
Stenographer

* * * * *

I, AMANDO SULIMENARIO LUMANTES, certify that pages 1 to 8, inclusive of statement made by me on June 1st, 1951, have been read by me, and that the answers herein given are true and correct to the best of my knowledge.

.....

(signature) (8)

PETITIONER'S EXHIBIT NO. 8
U. S. DEPARTMENT OF JUSTICE
Immigration & Naturalization Service
San Francisco 11, Calif.

File #1300/111905

Sworn statement taken from AMANDO
SULIMENARIO LUMANTES by Investigator
G. L. Hash, in Rm. 1106-C, 630 Sansome
St., San Francisco, California, on
June 4, 1951.

INVESTIGATOR HASH TO WITNESS:

Q. Why are you here today, Mr. Lumantes?

A. To redeem what I have said last Friday.

Q. Do you mean that the statement that you gave to
me in this room last Friday is not correct?

A. It is not correct, sir.

Q. And you now wish to make a statement that you
say will be correct?

A. That's right, sir.

Q. You understand that I am an Investigator of the
Immigration and Naturalization Service, Depart-
ment of Justice, authorized by law to administer
the oath in connection with the enforcement of
Immigration and Naturalization and Alien Regis-
tration laws. I desire to question you under oath
concerning your petition for the issuance of an
immigration visa to your wife, PETRONILA
ANGELA MUNAR LUMANTES. Any state-
ment you make should be voluntary and you are
hereby warned that it may be used against you

in any proceeding the Government deems advisable. Are you willing to make such a statement?

A. I am, sir.

Q. Will you stand and take the oath. Do you solemnly swear that all of the statements you are about to make will be the truth, the whole truth, and nothing but the truth, so help you, God?

A. I will tell the truth.

Q. You are informed that if you wilfully and knowingly give false testimony while under oath, during this proceeding, you may be prosecuted for perjury, the penalty for which is a fine of not more than \$2,000. or imprisonment of not more than five years or both such fine and imprisonment. Do you understand?

A. I understand, sir.

Q. What is your correct name and address?

A. AMANDO SULIMENARIO LUMANTES; 1204 Mason Street, Apt. 22, San Francisco, Calif.

Q. Are you the same person who gave a statement before me in this room on June 1st, 1951?

A. That is right; I am, sir.

Q. What part of that statement do you wish to retract?

A. To retract everything I said last Friday. (1)

Q. Do you mean that no one portion of that statement was true?

A. I want to revise everything; I want to start from the beginning and tell it correctly.

Q. Why, then, suppose you start from the beginning and in your own words tell me your story.

A. I will do it, sir. In July, 1946, I applied for my naturalization papers. And before I sail out, I handed it in to the room, I guess Room 1014, and then I sail out. I came back in February, 1947 from the Philippines on the same ship. I came over here to ask when do I have to take my examination. The lady down below told me that "your application was incomplete", because I don't give it to her the proof that I was in the States in 1931. So I went and get my record in high school, in Hayward Union High School, and gave my proof that I was here in 1931. And then, this is what I get for them; they give it to me; it was dated March 3, 1947; (displays school record). And that's where I handed it to the lady after I get it, in the afternoon, and then my ship moved out to Los Angeles a few days later. From then on, I sailed, March 21, 1947 from Los Angeles to Korea and I come back in Seattle, May 14, 1947. And that's all I know right there. And there is one more thing. To the best of my knowledge, I filled one blank while I handed in my proof that I was here in 1931; I filled one blank, the blank that says how long I have resided at Mason Street; some blank, some application, Mr. Hash. . . . I could not say what it is. That's all I could say right there.

Q. In what way does that change your status?

A. It changes the thing because it says right there in my application for naturalization that it was started April 8th (1947); that's what you said

last Friday. But I handed it to them in 1946, but it was not started in 1946 because it was incomplete, and I wasn't married before that when I handed in my application.

- Q. You haven't stated in so many words on this occasion, but I gather that you are trying to indicate that you were married after you filled in the form and before you finally presented it to this Service. Is that right?
- A. No, sir, I wasn't married when I gave my application to naturalization, to the lady down below. When I came back from the trip, it was incomplete because I didn't give them the proof that I was here in 1931.
- Q. But you were married on that trip?
- A. Yes, I was married on that trip.
- Q. Then whatever possessed you to make that statement to me last Friday?
- A. I was all mixed up. I could not tell you straight. The ship was in San Fernando 45 days; that is where I get married, it was so long there.
- Q. That still doesn't explain why you told me deliberately and after much thought that the marriage document which you had presented was false?
- A. Because I could not recall, Mr. Hash; that in my application for that naturalization I wasn't even married, I wasn't even married when I got my application right there; because I don't want to lose my citizenship papers. (2)
- Q. Do I gather correctly, then, that you felt that admitting to presenting a false marriage docu-

ment was a lesser evil than admitting perjury during the presentation of your applications for naturalization?

A. Ask me that question in a simple way.

Q. Did you think it would be worse for you to admit that you lied when you applied for naturalization than to say that your Marriage Certificate was false?

A. Well, to tell you the truth, frankly speaking, I was afraid I might lose my naturalization paper.

Q. Who filled out your application for you?

A. I did, sir.

Q. Are you able to type?

A. I do, sir.

Q. You say that after first presenting your petition to the Immigration Service, Naturalization Division in 1946, you sailed on a ship touching at the Philippines, and while there married PETRONILA ANGELA MUNAR?

A. That's right, sir.

Q. That you returned to the United States and contacted the Naturalization Division in Room 1014 and that they advised you that your petition was not complete since you did not present proof that you had resided in the United States since 1931. Is that correct?

A. That's correct, sir.

Q. Did they return the petition to you?

A. No, sir.

Q. They did not return the petition to you?

A. No. They asked me to get the proof.

- Q. Then, since you have first presented the petition, it has remained in the hands of the Immigration and Naturalization Service?
- A. Yes, sir.
- Q. Did you yourself fill out this form?
- A. Yes, sir.
- Q. Have you filled out all the forms you presented before the Immigration and Naturalization Service?
- A. To the best of my knowledge I don't think so. I filled all in some of them. I missed one page, a separate page.
- Q. Are you able to type?
- A. Yes, sir.
- Q. When you presented your evidence of residence in the United States in 1931, that is, a transcript of a high school record, did you at the same time present another petition for naturalization?
- A. No, sir. To the best of my knowledge, I didn't. I don't think so, sir. (3)
- Q. I now show you Form N-400 on which is typed under Record Found, on page 1, "Transcript of high school record shows petitioner entered Hayward Union High School at Hayward, California on August 17, 1931. Believe O.K. 10/14/48. (initials) C.A.A." Did you type this application? (Shown).
- A. Yes, sir; but I didn't type this. (Witness points to the above-noted notation under Record Found.
- Q. Did you type this entire form?
- A. Yes, I typed this one out. I typed it all except the writing under Sections 24 and 26, which is initialed "C.A.A."

Q. You have now stated to me under oath that to the best of your knowledge and recollection, you prepared this form prior to departing from the United States in 1946?

A. That's right, sir.

Q. That you then departed from the United States and while in the Philippines married the woman you now call your wife?

A. That's right, sir.

Q. That subsequent to your return to the United States early in 1947, you found that you had not presented proof of residence in 1931 and obtained that proof from the Hayward Union High School and then presented it to the Immigration Service. Is that story the one you now claim to be correct?

A. That's right, sir.

Q. I find that this form (Form 13-4), which appears to have been typed on the same typewriter and which this Service shows was presented on April 7th of 1947, includes the information: "Resided in the city of San Francisco until now, February of 1947; and employed in the city of San Francisco by the W. R. Chamberlin & Co. from July, 1946 to March of 1947." And then in pen appears the notation: "From March, 1947 until now", indicating a later date than March, 1947. Also, on the reverse side of Form N-400 on page 2 under Question (18): "Q. In what places in the United States have you resided during the past five years?" is typed the answer, "San Francisco, California since November, 1936 until now,

March, 1947.” That appears to me, Mr. Luman-tes, as conclusive proof that you presented this petition subsequent to the time you state that you were legally married to PETRONILA ANGELA MUNAR. What is your statement now?

A. There is no statement I could make right now. I don't know why . . . I could not say why I put down I was never married, and I was still married.

Q. Did you at that time believe yourself to be separated from your wife?

A. I did consider her my wife because I supported her . . . I sent her some money.

Q. Form N-405, the form which contains the record of your examination by Mr. C. A. Antonioli, Preliminary Examiner, indicates that you were sworn before him on October 14, 1948 and at that time gave information including the statement, “Marital history not shown in petition—None”; and under Question (7) in the space designated whether or not married, the word, “Not”. At that time you likewise stated “not married” before an Examiner of the Naturalization Department. Can you give any reason for that? (4)

A. That's right . . . he asked me that . . . are I married or not, and I said “No”. I don't know why I said “No”.

Q. Have you ever been in a hospital?

A. No, sir.

Q. Have you ever had any mental illnesses?

A. No, sir.

Q. Have you ever suffered lapses of memory?

A. No, sir.

- Q. Then, do you now admit that you knowingly and wilfully made false statements on your petition for naturalization and on all the forms submitted in accordance with that?
- A. I could not say I made a false statement on my application. I just said "No". I don't know why I said that.
- Q. You will just remember telling me that you said "No" to the question asked you as to whether or not you were married, put to you by Examiner Antonioli. Do you now admit that that was a false answer?
- A. I don't know why I said it. For my own reason, I don't know. I don't know why I said that because I was legally married.
- Q. Do you believe that you would in any way gain consideration for your naturalization petition by stating that you were a single man?
- A. I don't know whether a single man or a married man gets any consideration from the Immigration. I don't know.
- Q. You mean, in naturalization?
- A. In naturalization. I don't know.
- Q. You do admit making the statement that you were not married?
- A. Yes, I did; I made it.
- Q. You don't know why you made it?
- A. I don't know.
- Q. You told me verbally earlier in the day that there was someone in this area who was present at your marriage. Do you know the name and address of this person?

- A. I was trying to get the address over here because he was applying for naturalization, but he moved out. His name is MARIANO SABIANO. He formerly lived at 816 Franklin Street, Oakland. But he is not there now.
- Q. He was naturalized when?
- A. I don't think so; he apply for it.
- Q. He applied for it when?
- A. This year, sometime, I think. I tried to get his address but they wouldn't give it to me. (5)
- Q. You say he was present at the time of your marriage?
- A. Yes, sir. In fact, he was my interpreter because I could not speak their dialect.
- Q. Was he a seaman, like you, at that time?
- A. Yes, sir.
- Q. What is the address of your wife right now?
- A. Parinjao, Bauang, La Union (Philippine Islands).
- Q. Is there a United States Consulate there?
- A. No, sir; it is in Manila.
- Q. How far is that from Manila?
- A. I don't know how far. On the train, I leave 9 o'clock in the morning from San Fernando and arrive in Manila, 6 o'clock in the evening.
- Q. How long are you going to be around here?
- A. I have to go back to Los Angeles sometime tonight . . . 7 o'clock tonight, because my ship is there. From what the Captain told me, the ship would probably be moved from Los Angeles on Wednesday and then she is going to Stockton,

and from Stockton back to Frisco. They might change the order.

Q. When you return to town, will you look me up and read this statement and sign it?

A. I will do that, sir.

Q. (Written in English): Will you sign the stenographer's notebook to indicate that you were here today?

A. Yes.

A. S. Lumantes

(Signature, as traced from
notebook #20482.)

I hereby certify that the foregoing is a true & correct transcript of my stenographic notes taken in the above hearing.

Caroline M. Miller, Steno.

* * * * *

I, AMANDO SULIMENARIO LUMANTES, hereby certify that pages 1 to 6, inclusive, of statement made by me on June 4, 1951, have been read by me and that the answers herein given are true and correct to the best of my knowledge.

A. S. Lumantes

(signature of witness) (6)

PETITIONER'S EXHIBIT NO. 10
UNITED STATES DEPARTMENT
OF JUSTICE

Immigration and Naturalization Service
San Francisco District 1300-111905

Sworn statement made by AMANDO SULI-MENARIO LUMANTES on May 28, 1952 in Room 1106-C, Appraisers Building, San Francisco, California, before Investigator G. L. Hash, in the English language.

EXAMINING OFFICER TO WITNESS:

- Q. You are advised that I am an Investigator and Acting Immigrant Inspector of the U. S. Department of Justice, Immigration and Naturalization Service, and authorized by law to administer oaths in connection with the enforcement of the Immigration and Naturalization and Alien Registration laws. I desire to question you, under oath, concerning your naturalization and the statements you made regarding your marriage at the time you were petitioning for naturalization. Any statements you make must be voluntary and may be used by the Government in any proceeding deemed proper. Are you willing to make such statements freely and voluntarily under oath at this time?
- A. Yes, sir.
- Q. Please stand and take the oath. Do you solemnly swear that the statements you make will be the truth, the whole truth, and nothing but the truth, So Help You God?

A. Yes, sir.

Q. What is your correct name?

A. Amando Sulimenario Lumantes.

Q. What is your address?

A. 1204 Mason. I get my mail there and return there when I am not at sea, however I have been sailing most of the time.

Q. You are advised that the Central Office of the Immigration and Naturalization Service desires to ascertain your true reason for making false statements regarding your marriage while filing for naturalization. This information must be obtained either through your testimony or further investigation. Are you willing to discuss those reasons at this time?

A. Sure, sir.

Q. Have you a clear idea in mind as to what it was that caused you to state that you were not married when you filed for naturalization?

A. I don't know exactly why I did say I was not married when I actually was married. My mind seems confused.

Q. How long did you live with your wife after you married her?

A. About two weeks.

Q. When did you next see her?

A. The last part of 1950, December. (1)

Q. At the time you applied for naturalization did you consider that you were a married man?

A. No. I found that I could not find a ship to go back to the Islands and I thought I would quit sailing all together once I had been naturalized.

- Q. Did you ever state to anyone else that you were not married?
- A. No. When I went to work for the Standard Oil Company on a tanker they asked me if I was married in regard to retirement and insurance, and I told them I was married and my wife lived in the Philippines. When I was on board a ship and was asked if I was married in regard to income tax dependents, I told them I was married and my wife was in the Philippines, and they told me I could not claim dependents unless they lived in the United States, Mexico, or Canada. It seemed to me that if my wife did not live in Canada, Mexico, or the United States and I had very little chance of ever getting her here, I should not claim her as a wife or dependent.
- Q. Then had you sought advice as to whether you could bring your wife to the United States?
- A. I asked various people and finally went to ask advice from Attorney Hertogs to see if I could bring my wife and her two children by another marriage to the United States. He told me that it might be possible if I were a citizen to bring my wife to the United States, but it was very unlikely that I would be able to bring her two children.
- Q. Did you correspond with your wife very often after you married her?
- A. Not so often—once in a while—every three or four months.

Q. Did you have any idea when you applied to be naturalized whether being married to a woman in the Philippines would in any way affect your naturalizations?

A. I had no thought on the matter at all.

Q. Whose idea was it that your wife should emigrate to the United States?

A. It was her idea. She wanted to come here.

Q. What is the status between you and your wife right now?

A. Since it seemed hopeless to bring her to the United States and I only see her for a few hours every four or five months, I told her the last time I saw her we might as well call it off and I would see a lawyer in the United States and get a divorce.

Q. Is there anyone in the United States who has been acquainted with you for a long period of time?

A. Yes, Marcellino Yougat, who lives at the same address, 1204 Mason Street.

Q. How long have you known him?

A. Since 1937.

Q. Where does he work now?

A. In the shipyards.

Q. Does he work days?

A. Yes, sir. (2)

Q. Do you know when his days off are?

A. Saturday and Sunday.

Q. Is there anyone else?

- A. His brother, Lasor Yougat. He lives at the same place. He works somewhere in a hotel—I don't know where. I got my father too.
- Q. Where is your father?
- A. Somewhere in Richmond—I don't know exactly where.
- Q. Will you please sign the stenographer's notebook to indicate your presence here today?
- A. Will you read it back to me first?
- NOTE: Complete statement is read back to witness by stenographer.
- Q. You have had this testimony read back to you. Are there any changes you wish to make?
- A. No.
- Q. Will you now sign the stenographer's notebook as an indication of your presence?
- A. (Complies).

A. S. Lumantes
(Signature traced)

May 29, 1952

I hereby certify that the foregoing is a true and correct transcript of testimony taken at the above-described hearing.

Pat Wynn

Pat Wynn, Stenographer, Book 20998 (3)

PETITIONER'S EXHIBIT NO. 11

DISTRICT COURT OF THE UNITED STATES
 FOR THE
 DISTRICT OF NEW JERSEY
 DIVISION

<i>United States of America</i>	} No. Cr. 66-54 } Dist. Counsel } 1300-111905
v.	
AMANDO S. LUMANTES	

On this 21st day of MAY, 1954 came the attorney for the government and the defendant appeared in person and waived Counsel at the time of the entry of plea.

IT IS ADJUDGED that the defendant has been convicted upon his plea of guilty of the offenses of Conspiracy to Import, Transport and Conceal Narcotic Drug; Importing Narcotic Drug; Transportation and Concealment of Narcotic Drug. Title 21, USCA Sec. 174, as charged in the Information and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a

period of TWO YEARS and pay a fine of \$1.00 on each of Counts 1, 2, and 3. Said terms of imprisonment to run concurrently.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Thomas F. Meaney,

United States District Judge.

(Certification by Clerk.)